

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

RSA.No. 513 of 2007(C)

**(AGAINST THE JUDGMENT AND DECREE DATED 31/01/2007 IN
AS.54/1999 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT,
OTTAPPALAM AND THE JUDGMENT DTD. 30/03/1999 IN
OS.488/1997 OF THE MUNSIFF'S COURT, OTTAPPALAM)**
.....

APPELLANT/APPELLANT/DEFENDANT:

**P. SIVADASAN, S/O.NARAYANA MENON,
PROPRIETOR OF SARANYA MEDICALS, CHERPULASSERY ROAD,
OTTAPALAM AMSOM,ARIYOOR THEKKUMMURI DESOM,
OTTAPALAM TALUK,REPRESENTED BY POWER OF ATTORNEY
HOLDER,SURESHKUMAR K.P.,
S/O.LATE P.P.DAMODARAN NAIR,'SOUPARNIKA',POOLAKKA-
PARAMBA,OTTAPALAM AMSOM,P.O.THOTTAKKARA,
PALAKKAD DISTRICT.**

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENT: RESPONDENT/PLAINTIFF:

**KASSIM, S/O. RAYIN KUNJIMANAKATH MUHAMED,
OTTAPALAM AMSOM, ARIYOOR THEKKUMMURI DESOM,
OTTAPALAM TALUK.**

BY ADV. SMT.PRABHA R.MENON

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

M.SASIDHARAN NAMBIAR, J.

.....
R.S.A.No.513 OF 2007
.....

DATED THIS THE 5th DAY OF JULY, 2007

JUDGMENT

Defendant in O.S.488 of 1997 on the file of Munsiff Court, Ottapalam is the appellant. Plaintiff is the respondent. Plaintiff instituted the suit seeking a decree for mandatory injunction contending that appellant is a licensee of the plaint schedule building and under Ext.A3 license deed he has to pay a monthly license fee of Rs.650/- and he defaulted to pay the same and in spite of notice he did not pay or vacate the premises and therefore respondent is entitled to a decree for mandatory injunction directing respondent to vacate the building. Appellant filed a written statement contending that he is not a licensee but a lessee and he obtained the building on rent originally on 9.7.1990 for a monthly rent of Rs.400/- and the lease was being extended from time to time and as he is a tenant entitled to the benefit of Kerala Buildin(Lease and Rent Control) Act, hereinafter referred to as the 'Act' he cannot be evicted otherwise than as provided under the Act and therefore respondent is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of PW1, DW1 and

Ext.A1 and Ext.B1 to B3 rejected the case of appellant that he is a lessee, holding that Ext.A3 is a license deed and granted a decree in favour of respondent. Appellant challenged the decree and judgment before Sub Court, Ottapalam in A.S.54 of 1999. Learned Sub Judge on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard. The argument of learned counsel relying on the decision of the Apex Court in **Beena V. Ramachandra Rao**(2004(2)KLT 336) was that though Ext.A3 is styled as a license it was executed to deny the benefit of the provisions of the Act to appellant and the intention of the parties was only to create a lease and not a license and therefore appellant is entitled to the benefit of Kerala Act 2 of 1965 and courts below did not properly appreciate Ext.A3 and hence the decree and judgment are not sustainable.

4. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal. Though the argument of learned counsel appearing for appellant was that courts below decided the case relying only on the style

and nomenclature used in Ext.A3, the judgment does not support the argument. Ext.A3 specifically provides that appellant is entitled to use the building only for the purpose of running medical shop. Courts below, on appreciating that fact found that if what was created was a lease, there would not have been a restriction to use the building only for running a medical shop. Analysing other circumstances, it was held that the relationship created under Ext.A3 is only that of a licensee and respondent is entitled to the decree sought for. On the facts and circumstances of the case, no interference is warranted. No substantial question of law is involved in the appeal.

RSA is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-